

I.

Background and Plaintiffs' State Court Pleading

The notice of removal invoked the court's diversity jurisdiction as the basis for removal. While complete diversity is alleged as between CitiMortgage and plaintiffs, Stockman, Schwartz, and Lawson are alleged to be citizens of Texas, whose presence in this action would ordinarily destroy complete diversity and divest the court of jurisdiction. CitiMortgage maintains, however, that Stockman, Schwartz, and Lawson have been improperly joined, such that their citizenship should be disregarded for purposes of determining the court's diversity jurisdiction.

Plaintiffs appear to have filed this action in response to attempts to initiate foreclosure proceedings on their property in Grand Prairie, Texas. The complaint alleges, in a general way, that unspecified defendants engaged in "harassment tactic[s] by posting [plaintiffs'] property address into the public for the county of Tarrant in which created unlawful drive byes and Attorney Letters," "harass[ed]" plaintiffs, as well as their "Family and friends on our street . . . which is a form of slavery for unlawful enrichment," caused plaintiffs "undue hardship through fraud and organized crime," and violated plaintiffs' rights "under Human Rights for Declaration for Human

Rights [preamble] and right to contact with full disclosure." Notice of Removal, Ex. 1 p. 2 (errors and capitalization in original). Plaintiffs requested relief in the form of a declaratory judgment to quiet title and also sought rescission of the deed of trust.

II.

Improper Joinder

The burden of establishing federal jurisdiction is on the party seeking removal. Gasch v. Hartford Accident & Indem. Co., 491 F.3d 278, 281 (5th Cir. 2007). "The removal statute is therefore to be strictly construed, and any doubt about the propriety of removal must be resolved in favor of remand." Id. at 281-82. When, as here, federal jurisdiction is based on diversity, an action "may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2). When removal is premised on the alleged improper joinder of an in-state defendant, the removing party must show that joinder of the in-state party was improper. Smallwood v. Ill. Cent. R.R. Co., 385 F.3d 568, 574 (5th Cir. 2004).

The Fifth Circuit recognizes two ways to establish improper joinder: "(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of

action against the non-diverse party in state court." Id. at 573 (internal citation omitted). Because CitiMortgage has not alleged actual fraud in the pleadings, the test for improper joinder is:

whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.

Id. To answer this question, the court may either: (1) conduct a Rule 12(b)(6)-type analysis or (2) in rare cases, make a summary inquiry "to identify the presence of discrete and undisputed facts that would preclude plaintiff's recovery against the in-state defendant." Id. at 573-74. As CitiMortgage has not alleged fraud in the pleading of jurisdictional facts, the court must consider whether there exists a reasonable basis that plaintiff might be able to recover against Stockman, Schwartz, and Lawson.

In conducting a Rule 12(b)(6)-type analysis of plaintiffs' claims, the court "look[s] initially at the allegations of the complaint to determine whether the complaint states a claim under state law against the in-state defendant." Smallwood, 385 F.3d at 573. Taking into account that "Texas follows a "fair notice" standard for pleading and that "[p]leadings are to be construed

liberally in favor of the pleader," Horizon/CMS Healthcare Corp. v. Auld, 34 S.W.3d 887, 896 (Tex. 2000), the court has concluded that there is no reasonable basis to predict that plaintiffs might be able to recover against Stockman, Schwartz, or Lawson.

Even the most generous reading of the state court pleading shows an absence of any facts alleging that Stockman, Schwartz, or Lawson engaged in any unlawful conduct against plaintiffs. The state court pleading fails to describe with particularity anything that any of the defendants has done with regard to plaintiffs, or even to allege that Stockman, Schwartz, or Lawson have engaged in any conduct that concerns plaintiffs. The allegations in the pleading also fail to distinguish one defendant from another. At most, the pleading contends that unspecified defendants have tried to foreclose on plaintiffs' property. The remaining statements in the pleading are nothing more than conclusory assertions lacking factual support.

For example, plaintiffs maintain that defendants have harassed them and caused them undue hardship, but no facts are alleged to support these assertions. Further, it appears Lawson was added as a defendant only after she filed, in her capacity as deputy district clerk of Tarrant County, a document contesting plaintiffs' affidavit of indigency submitted in the state court

action. Nor do the names of Schwartz, Stockman, and Lawson even appear in the state court pleading.

Although a complaint need not contain detailed factual allegations, plaintiffs must do more than simply allege legal conclusions or recite the elements of a cause of action. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007). Thus, while a court must accept all of the factual allegations in the complaint as true, it need not credit bare legal conclusions that are unsupported by any factual underpinnings. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The court does not accept the conclusory allegations and unwarranted deductions of fact, as alleged by plaintiffs, as true. Plaintiffs have provided only labels and conclusions, and their pleading provides no reasonable basis for predicting that plaintiffs would be able to recover against Stockman, Schwartz, and Lawson. Accordingly, the court concludes that all claims against these defendants should be dismissed.

III.

Claims Against CitiMortgage

Following the court's dismissal of the improperly joined defendants, the court finds that it has diversity jurisdiction over this action. That conclusion, however, does not end the court's inquiry. The court has sua sponte reviewed the state

court pleading as to plaintiffs' claims against CitiMortgage and is concerned that it fails to allege a claim upon which relief could be granted.

The court may consider the sufficiency of a complaint and sua sponte dismiss the action "as long as the procedure employed is fair." Carroll v. Fort James Corp., 470 F.3d 1171, 1177 (5th Cir. 2006) (internal citation and quotation marks omitted). Fairness typically requires notice and an opportunity to respond. Id. Accordingly, prior to dismissing plaintiffs' claims against CitiMortgage, the court is giving them an opportunity to file an amended complaint.

In filing the amended complaint, plaintiffs should bear in mind the requirements of Rule 8(a), Rule 9, and Rule 10(b) of the Federal Rules of Civil Procedure. Specifically, Rule 8(a) requires a pleading to contain

- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Rule 9 of the Federal Rules of Civil Procedure imposes additional pleading requirements on a party alleging fraud or mistake. Rule 10(b) also requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." The amended complaint must also

plead facts that show the plaintiffs' right to relief is plausible. Iqbal, 556 U.S. at 679. Plaintiffs must take all of the foregoing into account in filing their amended complaint. Should plaintiffs fail to comply with the foregoing requirements, the court will consider the dismissal of plaintiffs' claims against CitiMortgage without further notice.

IV.

Order

Therefore,

The court ORDERS that all claims and causes of action asserted by plaintiffs, Deanna L. Wagner and Roger H. Wagner, against defendants Stockman, Schwartz, and Lawson be, and are hereby, dismissed with prejudice.

The court determines that there is no just reason for delay in, and hereby directs, entry of final judgment as to such dismissals.

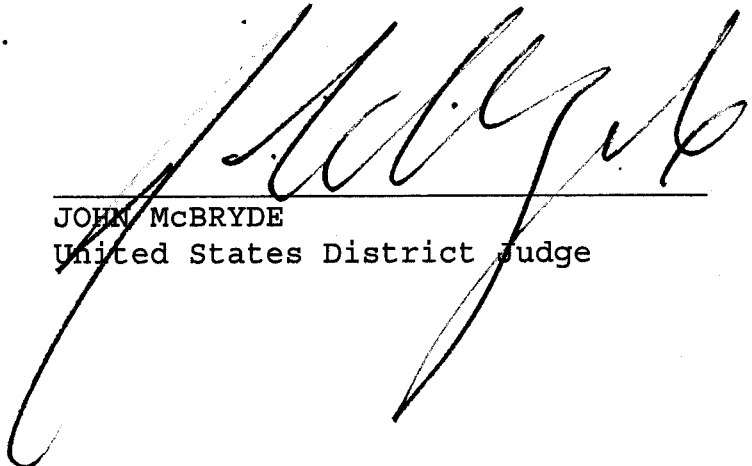
The court further ORDERS that the style of this action be modified by the elimination of all defendants except CitiMortgage from the style, so that from this point forward the style of this action shall be "Deanna L. Wagner and Roger H. Wagner, Plaintiffs, v. CitiMortgage, Inc., Defendant."

The court further ORDERS that plaintiffs by September 8, 2014, file an amended complaint that complies with the

requirements of Rule 8, Rule 9, if applicable, and Rule 10 of the Federal Rules of Civil Procedure.

The court further ORDERS that failure of plaintiffs to comply with this order may result in the dismissal of this action without further notice.

SIGNED August 22, 2012.



JOHN MCBRYDE
United States District Judge